

LUNENBURG PLANNING BOARD

TOWN OF LUNENBURG

Emerick R. Bakaysa, Chair
Joanna L. Bilotta, Vice-Chair
Thomas W. Bodkin, Jr., Clk.
Robert J. Saiia, Mbr.
Nathan J. Lockwood, Mbr.
Marion M. Benson, Planning Director



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Public Hearing Minutes Emerald Place at Lake Whalom (cont'd) August 9, 2010

Meeting Posted: Yes

Place: Town Hall, 17 Main Street, Lunenburg, MA 01462

Time: 6:30 PM

Present: Emerick R. Bakaysa, Joanna L. Bilotta, Thomas W. Bodkin Jr., Robert J. Saiia, Nathan J. Lockwood, Marion M. Benson

Chair opened the Public Hearing Continuation at 6:30 PM with the reading of the Public Hearing Continuation Notice posted at the posting locations. The Public Hearing was to hear and discuss a Modification to a site plan and layout for 10 Lakefront under Section 4.12. Lake Whalom Overlay District, Protective Bylaw of the Town of Lunenburg. Owner and Applicant is Emerald Place Development Co., LLC, 430 Bedford Street, Suite 195, Lexington, MA 02420.

Chair noted at Hearing onset that conversation would be limited to only the Modification.

Gary Crossen, principal, Emerald Place Development Co., LLC, 430 Bedford Street, Suite 195, Lexington, MA 02420, presented.

Mr. Crossen referred to August 9, 2010 letter, Rubin and Rudman LLP, Attorneys at Law, 50 Rowes Wharf, Boston, MA 02110. (Letter distributed to Board members at beginning of Hearing.) Chair read letter into record.

Rubin and Rudman LLP

Attorneys at Law

Dated August 9, 2010

Dear Planning Board Members:

I am legal counsel to Emerald Place Development Company LLC.

As you know, there was a public hearing on July 26, 2010 on the request of Emerald Place Development Company LLC to modify the special permit for the development known as Emerald Place at Lake Whalom (the "Special Permit"). That hearing was left open, adjourned and continued to August 9, 2010. At the conclusion of the July 26th hearing, several of the Planning Board members asked for follow-up on certain issues. This letter and the accompanying materials respond to those requests.

It is my understanding that a Board Member has raised questions about the transfer of density from the portion of the development parcel on the north side of Electric Avenue to the main portion of the parcel and the beachside area. This Member also raised questions about the traffic impacts and the desirability of eliminating the community clubhouse on the beachside area. Accompanying this letter are letters from Daniel Mills of MDM Transportation Consultants, Inc., William Scully of MS Transportation, Anthony Cleaves of Whitman & Bingham Associates and John F. Sullivan of Gavin and Sullivan Architects addressing the stated concerns. I also understand that the Board has been provided with letters from David Ross, Town Review Engineer and Michael Sauvageau, Town Building Commissioner addressing the same issues. As you can see from the accompanying materials, there is no reason to be concerned about new traffic impacts from the modified site plan. In addition, the modified plan has actually decreased density and downsized the design of the condominium units. The net result is a 17% increase in pervious surfaces, or put another way a 17% increase in green space.

I understand that the discussion about the clubhouse centered on a concern about the potential loss of an "iconic" clubhouse, which it was anticipated would add "charm" to the neighborhood. The development team is confident that these concerns arise from a misconception of what a clubhouse would bring to the community, especially in the face of our new economic reality resulting from our nation's deep recession. As another Board Member observed during the public hearing, a clubhouse in a condominium community is typically used by less than 10% of the residents.

Given the current economic environment, it has been necessary to scale down the vision for Emerald Place to match the new economic reality. Accordingly, a clubhouse, if built, would be based on a very tight construction budget. Similarly, subsequent upkeep and maintenance of the clubhouse, which would be the financial responsibility of the condominium associations who will eventually step into the shoes of the developer, would likely be done on a very tight budget, as these maintenance costs would only serve to drive condominium dues to levels that homeowners buying at today's price points will be unwilling to absorb. In the judgment of the development team, any clubhouse would in ten years or less more likely present an eyesore on the lakefront rather than a charming iconic building.

It is also my understanding that another Member raised the issue of whether the developers would include some affordable housing units at Emerald Place. As you know, the Special Permit was granted on June 12, 2006 under the authority of the Protective Bylaw of the Town of Lunenburg. Under Section 4.12.5.2. of the Bylaw, the developer was authorized to elect either affordable housing or age-restricted housing (i.e. over 55 years of age). Acting under this section, the developer sought and the Board granted the Special Permit subject to the requirement that a portion of the community be age-restricted. The developer has not sought a modification of that portion of the Special Permit and thus it is not open for review.

The new development team bought the rights created by the Special Permit relying on its provisions, including the presence of the age-restricted component and the absence of an affordable housing component. Inclusion of an affordable housing component at this time would destroy the economics of the project, thus making it a completely different project as an economic matter from the one permitted and bought by the new developers.

In addition, projects which include an affordable housing component would need to comply with the statutory structure for such housing in Massachusetts. The developers have no experience with that structure nor have they created any mechanism for implementing affordable housing. The need to do so would further destroy the economic viability of the Emerald Place at Lake Whalom project.

Finally, and respectfully, I urge an affirmative vote on the requested modification. There is no legally sound basis for a negative vote. The project has been constructed to date in a high quality manner with the development team fulfilling each of its commitments to the Town of Lunenburg. The project also began construction in the throes of our nation's economic malaise; a time when other developers were unwilling to take the risks of such a project. It is my understanding that since its start at the end of 2009, the project has injected significant (i.e. in excess of \$1 million dollars) funds in previously delinquent taxes and development related fees into the town's operating fund. The project should be permitted to move forward incorporating the proposed modifications, all of which are within both the requirements of the Protective Bylaw of the Town of Lunenburg and the spirit of the original Special Permit.

I will be present for the hearing if you have any questions. Thank you for your consideration.

Signed Lauren A. Liss

(Above letter contained attachments from 1) MDM Transportation Consultants, Inc., 2) MS Transportation, 3) Whitman & Bingham and 4) Gavin and Sullivan Architects. Complete copy on file in Planning Office.)

Chair read the following letters into record:

David E. Ross Associates, Inc.

Dated August 4, 2010

Dear Marion,

In accordance with a request by the Chairman of the Planning Board, I have reviewed the Lake Whalom Overlay District with specific attention to the unit density requirement. Section 4.12.5.2. allows for a unit density that shall not be more than eight (8) units per acre. The Special Permit request by the applicant was for the overall approval of one site specific project that contains a total acreage in excess of 30 acres. At the allowed density of 8 units per acre over 30 acres, not more than 240 units are allowed to be constructed. The applicant is proposing 238 units. The construction of Town houses and garden apartments are permitted uses within the Lake Whalom Overlay District, as long as there are no more than two (2) bedrooms per unit. The unit styles, building makeup and location, are subject to design considerations by the applicant and not regulated by the Overlay District. In my opinion, the units and buildings shown on this modification are in compliance with the Overlay District.

Signed, David E. Ross, P.E., P.L.S.

Michael J. Sauvageau, Building Commissioner/Zoning Official

Dated July 30, 2010

Dear Marion,

At the Chairman of the Planning Boards request, I have reviewed the Whalom Overlay District Bylaw, Section 4.12 of the Lunenburg Protective Bylaw to ascertain the unit/acreage calculation of the Emerald Place Project. In reviewing the bylaw, the original approval and the proposed modification of the original approval, I have determined the following.

1. Under Section 4.12.5.2, a modification to the dimensional requirements of Section 5.0 is allowed. This provision eliminates the requirement for strict compliance with the lot area minimums for individual structures.
2. Under Section 4.12.5.2, a maximum of eight units per acre is allowed in the overlay district.

3. Under number five of the approved directives of the Development Plan Review and Special Permit dated June 15, 2006 of the original project, it is noted that the Special Permit was the "overall approval of one site specific project".
4. Under the approved findings of the Development Plan Review and Special Permit dated June 15, 2006 of the original project, under finding number one, it was determined that the overall site included 31.64 acres for 240 townhouse and garden style units.
5. Under finding number three of the June 15, 2006 findings, it was determined that the project was a "site specific development".
6. Under finding number seventy-seven of the June 15, 2006 findings, it was determined that the density of the project was less than the eight unit maximum.

After careful review of the Whalom Overlay District and the Findings and Directives of the 2006 Planning Board's Special Permit for the project, I have determined that the overall site of the Emerald Place Project as approved, in addition to the requested modification of the road design with the relocation of the building/unit footprints, complies with the requirements of the Whalom Overlay District's unit maximum requirements. In addition, I have determined that the 2006 Planning Board's approval for the original project was in order. It is also my opinion that the applicant's proposed modification will meet the requirements of the Whalom Overlay District if the Planning Board finds that the proposed modifications meet the requirements of the design criteria for the requested changes under the Planning Board's rules and regulations or waivers to those requirements are granted. Finally, I find that the modification of the unit count from 240 to a proposed 238 is an allowable reduction in light of the fact that a total of 253 units would have been allowed for the project which consists of 31.64 acres.

If you have any questions in regards to this correspondence, please feel free to contact me at your convenience.

Signed, Michael Sauvageau, Building Commissioner/Zoning Enforcement Officer

Mr. Bodkin Jr. asked David Ross if he had reviewed the traffic data, but Mr. Ross stated he does not normally do traffic engineering. He reviewed the drainage plans which are in compliance. Mr. Ross supplied a letter this date to the Planning Office, which Chair read into record:

David E. Ross Associates, Inc.

Dated August 9, 2010

Dear Mrs. Benson,

In accordance with your request, I have reviewed modified plans of Emerald Place at Lake Whalom dated July 19, 2010. The modification has been made due to the addition of a parcel of land located behind #84 Lake Front Avenue. The addition of this parcel has allowed the applicant to design a better road layout than originally approved. This design reduces the number of roads exiting onto Lake Front Avenue by one. This modification also includes a different unit style of two units over two in some areas as well as a revised building layout. It should be noted that the total number of units remains less than the maximum of 8 units per acre and no more than 2 bedrooms per unit. This modification has also removed plans for a clubhouse. Overall, the plans are well prepared and are in compliance with the Lake Whalom Overlay District and good engineering practice. I make the following suggestions and/or comments: 1) The plans still mention a "proposed clubhouse" although the clubhouse has been removed. The reference to a clubhouse should be removed. 2) the unit numbers should be added to the plans. 3) changes have occurred within the 100 foot buffer zone. This will require a review by the Conservation Commission. Please contact me with any questions.

Signed David E. Ross, P. E., P.L.S.

Director noted inclusion of third-party transportation review as part of Rubin and Rudman packet. Mr. Bodkin Jr.'s interpretation of the review was that there would be a daily increase of 48 trips from Parcel A. Anthony Cleaves, Whitman & Bingham noted both MDM Transportation (third party review) and MS Transportation came to the same conclusion; that the relocation of four (4) units from the Pierce Avenue parcel to the main parcel and the beach parcel would not constitute any significant change to the original traffic report. As units are being decreased by two (2), project has the same traffic count – traffic just takes a different route, which will increase traffic at some intersections and decrease at others. At this time, traffic cannot be anticipated from Parcel B as future development is unknown.

Ms. Bilotta heard there was the possibility of three (3) bedroom units. Mr. Crossen noted all units will be two (2) bedrooms and this has been reinforced to the real estate broker. Ms. Bilotta thought that the Parcel B acreage was to be subtracted from the total acreage of 31.64 with the relocation of the residential units, thereby giving the applicant less acreage. Mr. Cleaves clarified to the Board that the entire Pierce Avenue parcel is 6 – 6 ½ acres, but only a portion of that, approximately 3 – 3 ½ acres, is in the Whalom Overlay District. He noted that the density of the project has not changed. All the land together makes up the multi-use project. Chair noted that this is a one-site approval and the applicant can place the residential units in a configuration of their

choosing as long as they remain in compliance with the intent of the bylaw. Mr. Sauvageau noted total project encompasses 31.64 acres, which breaks down to 253 possible units as allowable is eight (8) units per acre. There are building footprints of 1/3 of an acre with 24 units which substantiates the fact that it's eight units per acre, not eight units on an acre. He also noted that the applicant will have to come before the Planning Board for site plan review at the time of development of the commercial portion of the site and that the commercial component approval granted by the Planning Board in 2006 cannot be revoked.

Chair noted that this Modification was mainly brought forth due to a roadway change as a result of the land purchase.

Director checked with Town Counsel as both a Special Permit and a Development Plan Review Approval were issued. Town Counsel stated that four (4) votes would be required for approval as a Special Permit had been issued.

Mr. Bodkin Jr. stated he was not agreeable to this Modification and wanted to put forth his rational. Chair noted discussion and vote would take place during Board meeting immediately following the Hearing.

Mr. Bodkin Jr. felt that the Whalom Overlay Bylaw should be discussed. Chair noted that was not appropriate for this Hearing. The Lunenburg citizens voted this bylaw into effect a number of years ago at town meeting. The applicant has been granted a special permit under this bylaw and this hearing is for a modification to a special permit they already hold. To go back now and revisit a bylaw that was done a number of years ago is inappropriate. Some Board members noted they were not familiar with the Whalom Overlay Bylaw.

Mr. Lockwood asked Mr. Sauvageau if Parcel B would continue to be available for residential use or only commercial, and could the applicant come back at a future date requesting more residential. Mr. Sauvageau responded that the applicant chose to move the residential units from the Pierce Avenue parcel into the main parcel and retain the commercial component of the Pierce parcel. The commercial component can only be used in the commercial district. As the commercial/residential zoning cuts the developer's property, under the Zoning Bylaw, the developer has the ability to passively use fifty (50') feet into the abutting district. (They wouldn't be able to place a building there, but it could be used for parking.) If they wish to do more residential it would have to be in the residential portion of the Overlay District and have frontage. A Modification would be required to place on Parcel B.

As this is a one-site development, Chair wanted assurances from the developer that Parcel B would not be sold at a future date. That would be in violation of the Special Permit. Mr. Crossen responded that the Special Permit binds the entire geography of the development. If the property was sold, which the developer has no intentions of; a new owner would be bound by the Special Permit. Developer anticipates not building more than 240 dwelling units, and a "small" commercial component, which may be made up of specialty shops that serve the community.

Mr. Lockwood inquired of Mr. Ross if the green space calculation noted in the Rubin & Rudman correspondence included treating the vacant Parcel B as green space. Mr. Ross responded that the 17% figure came from the Applicant. The ability to add to that piece of property has improved the road layout internally. Mr. Cleaves noted that although moving units from three (3) parcels onto two (2) parcels, there is less coverage due to a decrease in the building footprint, thereby creating more open space. Parcel A now has a decrease in both percentage of total impervious surface and building footprint with building style.

George Watts, Attorney representing Rhonda Newman, Lakefront Avenue, stated that under the Modification, density has increased by Scooters Bar, which is an on-going commercial operation. His client, Ms. Newman, is aggrieved by the Plan, as designed. Under the Modification, the townhouses will be very close to her property (Scooters Bar). To preclude Ms. Newman being put out of business by noise complaints against the bar, a condition should be put on the developer to make buyers aware in the deed that there is an on-going commercial operation very close. Ms. Newman feels the closeness of the units will have a dramatic negative effect on Scooters. For that reason she is aggrieved by the proposal, as drawn up. Mr. Cleaves disagreed, stating that roadways are located on either side of Scooters. A wall and grading had been located very close to the Scooters property line, but has now been removed and the grading is further away from Scooters. Under the currently approved Plan, units are closer to Scooters. Under the Modification units have been pulled further away.

Mr. Crossen brought to the attention of the Board that even though they will not be offering affordable housing due to economics, they would be offering a 2% discount program available to returning veterans and to those purchasing into the age-restricted units.

Chair asked for a Motion to close Hearing and enter into regular Planning Board meeting. Motion, Ms. Bilotta, Second, Mr. Bodkin Jr., Hearing closed 8:00 PM. Roll Call vote- Mr. Bodkin Jr., aye, Ms. Bilotta, aye, Mr. Bakaysa, aye, Mr. Saiia, aye, Mr. Lockwood, aye.

Audio recording on file in Planning Office.

Attachments:

Letter, 8-4-10, David E. Ross Associates, Inc.

Letter, 7-30-10, Lunenburg Building Department

Electronic mail, 7-27-10, Carl Pearson

Letter, 8-9-10, David E. Ross Associates, Inc.

Letter, 8-9-10, Rubin & Rudman LLP, w/attachments

Letter, 8-3-10, MDM Transportation Consultants, Inc.

Report, November 2005, MS Transportation Systems, Inc.

Draft Letter, 8-5-10, MS Transportation Systems, Inc.

Letter, 8-2-10, Whitman & Bingham

Data Sheet, 7-29-10, Gavin & Sullivan Architects

Portion of Original Approved Plan

Portion of Proposed Modification